

## Department of the Army, DoD

## § 536.34

adjudicated by receiving State offices under NATO or other SOFA, will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.

(b) If another agency has taken denial action on a claim that involves the DA, without informing the DA, and in which the DA desires to make a payment, the denial action may be reconsidered by the DA not later than six months from the date of mailing and payment made thereafter.

NOTE TO § 536.32: See also §§ 536.17 and 536.18; AR 27-20, paragraph 13-2; and the parallel and related discussion of this topic at DA Pam 27-162, paragraphs 1-19, 1-20, 2-13 and 13-2.

### § 536.33 Use of small claims procedures.

Small claims procedures are authorized for use whenever a claim may be settled for \$5,000 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27-162, paragraphs 2-14 and 2-26.

### § 536.34 Determination of correct statute.

(a) *Consideration under more than one statute.* When Congress enacted the various claims statutes, it intended to allow federal agencies to settle meritorious claims. A claim must be considered under other statutes in this part unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF 95. Prior to denial of an AR 27-20, chapter 11 claim, consider whether it may fall within the scope of subparts C, D, or F of this part, and where indicated, ques-

tion the claimant to determine whether the claim sounds in tort.

(b) *Exclusiveness of certain remedies.* Certain remedies exclude all others. For example, the Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied-in-fact, as well as governmental contract losses, or intangible property losses. Claims of this nature for \$10,000 or less may be filed in a U.S. District Court. There is no administrative remedy. While the FTCA is the preemptive tort remedy in the United States, its commonwealths, territories and possessions, nevertheless, other remedies must be exhausted prior to favorable consideration under the FTCA. The FTCA does not preclude use of the MCA or the NGCA for claims arising out of noncombat activities or brought by soldiers for incident-to-service property losses sustained within the United States. See DA Pam 27-162, paragraphs 2-15a and b for a more detailed discussion of determining the correct statute for property claims versus personal injury and death claims. In addition, it is important to consider the nature of the claim, e.g., whether the claim may be medical malpractice in nature, related to postal matter, or an automobile accident. Discussions of these and many other different types of claims are also provided herein as well as in the corresponding paragraph 2-15 of DA Pam 27-162. It is also very important to consider when a claim may fall outside the jurisdiction of the Army claims system. Some of these instances are alluded to immediately above, but for a detailed discussion of related remedies see § 536.36 of this part and paragraph 2-17 of DA Pam 27-162.

(c) *Status of Forces Agreement claims.*

(1) Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27-162, paragraph 2-15c sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in § 536.76(h) of this part.